

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 05-2411

IN RE: CAROLINE P. AYRES-FOUNTAIN

Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the District of Delaware
(Related to D. Del. Civ. No. 04-cv-349)

Submitted Under Rule 21, Fed. R. App. P.
JUNE 16, 2005

Before: SLOVITER, NYGAARD AND FUENTES, Circuit Judges.

(Filed June 28, 2005)

OPINION

PER CURIAM

Caroline P. Ayres-Fountain has filed a mandamus petition requesting that we order the District Court to (1) vacate its order dismissing her complaint; (2) rule on her motion to amend; (3) order the state court proceedings stayed; and (4) hold an evidentiary hearing. Ayres-Fountain filed a complaint in the District Court for the District of

Delaware alleging fraud by Eastern Savings Bank and seeking rescission of a mortgage note. The District Court granted Eastern Savings's motion to dismiss. Ayres-Fountain filed a notice of appeal which was docketed at C.A. No. 05-2418.

The writ of mandamus will issue only in extraordinary circumstances. See Sporck v. Peil, 759 F.2d 312, 314 (3d Cir. 1985). As a precondition to the issuance of the writ, the petitioner must establish that there is no alternative remedy or other adequate means to obtain the desired relief, and the petitioner must demonstrate a clear and indisputable right to the relief sought. Kerr v. United States District Court, 426 U.S. 394, 403 (1976). A writ is not a substitute for an appeal; only if a direct appeal is unavailable will the court determine whether a writ of mandamus will issue. See In Re Ford Motor Co., 110 F.3d 954, 957 (1997).

With respect to her request that we order the District Court to stay the state court proceedings, that request is barred by the Anti-Injunction Act. See 28 U.S.C. § 2283 ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.") With respect to her requests that we order the District Court to vacate its order, rule on her motion to amend, and hold an evidentiary hearing, mandamus relief is not warranted because a direct appeal is available.

For the above reasons, we will deny the petition for a writ of mandamus.